

Commonwealth Edison Company

Proposed general increase in electric rates

:
: ICC Docket No. 10-0467
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REPLY BRIEF ON EXCEPTIONS

OF THE COALITION TO

REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER

REACT

COMPRISED OF:

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THE CITY OF CHICAGO

COMMERCE ENERGY, INC.

FLINT HILLS RESOURCES, LP

FUTUREMARK PAPER COMPANY

INTEGRYS ENERGY SERVICES, INC.

INTERSTATE GAS SUPPLY OF ILLINOIS, INC.

THE METROPOLITAN WATER RECLAMATION DISTRICT

OF GREATER CHICAGO

PDV MIDWEST REFINING LLC

UNITED AIRLINES, INC.

WELLS MANUFACTURING, INC.

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STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Commonwealth Edison Company :
: **Docket No. 10-0467**
Proposed General Increase in Electric :
Rates :

**REPLY BRIEF ON EXCEPTIONS OF THE COALITION
TO REQUEST EQUITABLE ALLOCATION OF COSTS TOGETHER**

The Coalition to Request Equitable Allocation of Costs Together (“REACT”), by and through its attorneys, DLA Piper LLP (US), pursuant to Section 200.830 of the Rules of Practice of the Illinois Commerce Commission (“Commission”) (83 Ill. Admin. Code 200.830), respectfully submits its Reply Brief on Exceptions in the instant proceeding addressing the Briefs on Exceptions of the other parties regarding the Proposed Order issued by the Administrative Law Judges (“ALJs”) in the present proposed general increase in electric rates of Commonwealth Edison Company (“ComEd”).¹ REACT joins ComEd's request for oral argument to the extent that the Commission believes that it would be beneficial to hear oral argument on any issue addressed by REACT during the course of this proceeding.

I.

INTRODUCTION

ComEd’s delivery services rates should accurately reflect the actual costs ComEd incurs to provide delivery services. This fundamental rate design principle is at the heart of the Public Utilities Act, and has been endorsed repeatedly by the Commission. The Proposed Order takes several positive steps to further advance this principle. With regard to the two issues central to REACT (i.e., the rates for the over-10 MW customer classes, and the Customer Care Cost),

¹ This Reply Brief on Exceptions follows the outline used in the Proposed Order. The positions stated herein do not necessarily represent the positions of any individual REACT member.

ComEd's Brief on Exceptions repeats ComEd's continued disdain for Commission Orders directing it to provide the information necessary to establish rates that reflect accurate cost causation.

For the last three years, REACT has been requesting that ComEd's rates charged to the over-10 MW customer classes be set at a level that reflects ComEd's actual cost to serve those customer classes -- no more, and no less. For three years, in three separate proceedings - two rate cases and a special rate design investigation proceeding (ICC Docket No. 08-0532, the "Rate Investigation") -- ComEd has pushed back at every turn, refusing to provide the information necessary to determine those actual costs. Indeed, even in the face of a Commission Order explicitly directing ComEd to include this specific information in its initial filing in this proceeding, ComEd refused to provide the information.

The Proposed Order takes an appropriately strong stand regarding the importance of following Commission Orders, making it clear that the Commission expects those Orders to be complied with and respected. Perhaps not surprisingly, ComEd's Brief on Exceptions attacks the Proposed Order, not only by suggesting that ComEd did comply with prior orders -- a suggestion fundamentally at odds with the procedural history of this case and the substantive evidence -- but also by suggesting that the Commission lacks the authority to require ComEd to undertake any action that might even theoretically affect the timing of the filing of some future, unspecified additional ComEd case, in which ComEd would seek yet another rate increase.

The Proposed Order also takes concrete steps to implement the Commission's long-standing policy to move closer to rate design that reflects actual cost causation. In particular, the Proposed Order recognizes that the information grudgingly presented at the eleventh hour by ComEd and the credible analysis of that information by a former ComEd engineer providing expert testimony on REACT's behalf justifies a requirement that ComEd perform a study to

determine the actual assets used and resulting costs to serve certain large customer classes. ComEd attacks the Proposed Order, suggesting that the idea of such a study is “off the table” based on certain quotes cherry-picked from prior cases. ComEd ignores the compelling information that it grudging produced and the expert analysis of that information, which obviously was carefully considered by the Administrative Law Judges in concert with prior statements by the Commission, leading the Proposed Order to find that a study is proper and is not inconsistent with the Commission’s prior statements on related issues.

Similarly, for the last three years, REACT has been requesting that supply-related Customer Care Cost be removed from ComEd’s delivery services rates, and instead be accurately allocated to ComEd’s supply rates. This issue also has been litigated over the same three proceedings, with ComEd pushing back at every turn. Initially, ComEd refused to even identify the capital costs and indirect operations and maintenance (“O&M”) costs associated with providing supply-related Customer Care. In this proceeding, in response to the Commission’s explicit direction in the Rate Investigation Order, ComEd did identify those additional costs in an “embedded cost” Allocation Study, but ComEd has refused to allocate those costs to its supply function. Instead, ComEd asserts that only its *direct* O&M costs should be assigned to the supply function, using an “avoided cost” Switching Study to assign these costs, even though virtually all of its other costs in this proceeding are allocated using the embedded cost methodology. The result is that ComEd again advocates for less than 1% of its Customer Care Costs be assigned to its supply function. (*See* REACT Ex. 2.0 at 11:223-226.) Based on highly credible and specific analysis of this question presented by REACT expert witness Jeff Merola, REACT respectfully requests that slightly more than one fifth (20.9%) of these Customer Care Costs be assigned to the supply function, using ComEd’s Allocation Study, with appropriate adjustments to ComEd’s proposed allocators. (*See* REACT Ex. 2.5C.)

Importantly, deciding the cost causation and cost allocation issues in the manner suggested by REACT would not impact ComEd's bottom line at all. Indeed, ComEd's Brief on Exceptions admits this. (*See, e.g.*, ComEd Brief on Exceptions at 72.) Regarding the over-10 MW customer classes, REACT is simply looking for the costs to be accurately and appropriately assigned among the classes based upon the actual costs the classes cause ComEd to incur. Regarding the Customer Care Costs, REACT agrees that the supply-related costs removed from ComEd's delivery services rates should be recovered in ComEd's supply rates. REACT respectfully requests that the Commission take the steps necessary to ensure that ComEd's delivery services rates accurately reflect the actual costs ComEd incurs to provide delivery services.

VI.

COST OF SERVICE AND ALLOCATION ISSUES

A. Overview

ComEd alleges that while it is apparently blissfully "neutral" on cost of service and allocation issues, other parties -- such as REACT -- have an "agenda." (*See* ComEd Brief on Exceptions at 71-72.) ComEd's alleged "neutrality" might well be questioned based upon its overly zealous defense of its flawed ECOSS and other demonstrably inaccurate allocations that have been repeatedly questioned by the Commission itself, as well as parties including Staff, REACT, Metra, the CTA, IIEC, the City of Chicago, and others during this proceeding, ComEd's last rate case, and the Rate Design Investigation. As far as REACT's "agenda" is concerned, REACT has always been candid about its goal: fair and accurate allocation of costs to cost causers. That "agenda" is precisely consistent with the Act's clear requirement that "Charges for delivery services shall be cost based." (220 ILCS 5/16-108(c).)

ComEd also reprises its argument that Commission Orders requiring the company to provide information in an initial rate case filing would be an illegal restraint on ComEd's ability to file Rate Cases. (*See* ComEd Brief on Exceptions at 73-76.) Yet, ComEd asserts that it will follow the Commission's Order if it requires ComEd to undertake analyses to be submitted with its initial filing, but resists the timing. (*See id.* at 74-75.) It is well-established law in Illinois that the Commission has "plenary authority" to regulate ComEd and other public utilities. (*Abbott Labs, Inc. v. Ill. Commerce Comm'n*, 289 Ill. App. 3d 705, 711, 682 N.E.2d 340, 347 (1st Dist. 1997).) If that authority means anything, it must mean that the Commission may make determinations about the information that ComEd has provided and about the baseline information that should provide in the future if it seeks to raise the rates of its Illinois customers. ComEd's argument that the Commission does not have the authority to order studies or analyses to be provided with an initial rate case filing is entirely without merit.

In response to ComEd's prior assertions regarding the Commission's alleged inability to manage ComEd's requests for rate increases, REACT previously has explained in detail that the Commission has plenary authority to regulate the public utilities appearing before it. (*See* REACT Petition for Interlocutory Review 17-18 *citing* *Abbott Labs, Inc. v. Ill. Commerce Comm'n*, 289 Ill. App. 3d 705, 711, 682 N.E.2d 340, 347 (1st Dist. 1997); *Peoples Gas Light and Coke Co. v. Ill. Commerce Comm'n*, 165 Ill. App. 3d 325, 246, 520 N.E.2d 46 (1st Dist. 1987); 200 ILCS 5/10-101.) The Commission possesses inherent regulatory authority to reasonably and prudently control its docket. (*See* REACT Petition for Interlocutory Review at 18 (citing 83 Ill. Admin. Code § 200.25(b)).) This authority may be applied proactively (setting reasonable requirements for filings) equally as well as retroactively (dismissal).

Requiring ComEd to file studies or analyses with the Commission in no way restricts ComEd's ability to file a rate case. (*See* REACT Petition for Interlocutory Review at 8-11.)

ComEd may file its next rate case at any time, provided that it completes the necessary studies, and could petition for emergency relief if it were necessary. (See REACT's Sept. 13, 2010 Reply in Support of its Motion to Dismiss at 9 citing *Bus. & Prof'l People for the Pub. Interest v. Ill. Comm. Comm'n*, 136 Ill. 2d 192, 225, 229-230 (1989); see also ICC Docket No. 10-0597 (ComEd requesting and receiving bridge tariff after appellate court ruling).)

Subject to legal limitations, the Commission possesses the authority to dictate the scope and substance of information that is required when a public utility seeks to raise the rates of Illinois ratepayers. ComEd makes no argument that the informational requirements set forth in the Proposed Order are arbitrary, overly broad or capricious -- nor could it, because those requirements fit well within the types of actions (*e.g.*, studies, workshops, post-record filings, updates, and reports) that the Commission regularly orders in connection with rate cases and other case, both with respect to ComEd and other public utilities. (See, *e.g.*, ICC Docket No. 08-0532, Final Order dated April 21, 2010 at 40 (discussing ECOSSE-related requirements), 69 (ordering ComEd to provide an embedded Customer Care Cost allocation) 85 (Ordering paragraphs); ICC Docket No. 08-0363, Final Order dated March 25, 2009 at 77 (requiring Nicor Gas to file certain allocation testimony in next rate case), 183-185 (requiring Nicor Gas to open a docket within set timeframe for either approval of affiliate agreement or modified affiliate agreement); ICC Docket No. 05-0597, Final Order dated July 26, 2006 at 166-167 (requiring ComEd to file "direct testimony at the time its files next rate case" on weighting factors).) ComEd's suggestion that the Commission lacks the authority to require these filing -- when the Commission frequently has entered Orders requiring such filings, and ComEd has never challenged those Orders on these grounds -- lacks merit.

C. Contested Issues

1. Embedded Cost of Service Study Issues

b. Primary/Secondary Split

(i) The Appropriate Methodology/Non-Compliance With What The Commission Required In Its Final Order In Docket 08-0532

ComEd claims that it complied with the *Rate Design Investigation* Order. (See ComEd Brief on Exceptions at 72-73.) On this matter, the Proposed Order speaks for itself, noting ComEd non-compliance no less than eight (8) times. (See Proposed Order at 75, 157, 163, 166-167, 168-169, 171, 199, 241-242 (noting that none of ComEd's proposed ECOSs comply with the *Rate Design Investigation* Order).) The Proposed Order finds ComEd's non-compliance to be sufficiently severe that it repeatedly reiterates that ComEd was (and is) under an absolute obligation to comply with unappealed Commission Orders. (See, e.g., Proposed Order at 167, 169.) For example:

Additionally ComEd really articulated no legitimate reason for its failure to comply with the Commission's Order in this regard. Instead, ComEd's response was that compliance is not necessary. We again reiterate that there are legal remedies available to any party that does not agree with a Commission Order, or, who has confusion about a Commission Order. Absent the use of the legal options available for parties when they do not agree with Commission Orders, all parties before this Commission shall comply with Commission Orders. ComEd is again advised that the Public Utilities Act provides penalties for failure to comply with Commission Orders.

(Proposed Order at 169.)

ComEd's suggestion that the Proposed Order's findings are unsupported lack merit. Both Staff and IIEC explained in exhaustive detail the many non-compliant aspects of ComEd's filings. (See Staff Initial Brief at 94-96, 97-104; IIEC Initial Brief at 38-41, 43-45.) REACT has also actively litigated this matter and sought dismissal of the case because on its face ComEd's initial filing was not in compliance (a remedy also sought by the Attorney General and

Dominion). (See Aug. 26 2010 Response of the People of the State of Illinois and Dominion Retail, Inc. to Commonwealth Edison Company's Motion for Leave to File Supplemental Direct Testimony and Motion to Dismiss; Sept. 14, 2010 People of The State of Illinois' and Dominion Retail, Inc.'s Reply to Commonwealth Edison Company's Combined Reply in Support of Motion for Leave to File Supplemental Direct Testimony and Response to Motions to Dismiss.)

Although the Commission declined to dismiss this docket for ComEd's non-compliance at the outset, three Commissioners strongly criticized ComEd for its failure to comply with clear Commission Orders in the first instance. (See REACT Brief on Exceptions at 21-22 (summarizing history of REACT's Motion to Dismiss and necessity of following Commission Order in *Rate Design Investigation* Order).) Throughout the evidentiary portion of this case, Staff, REACT and numerous other parties presented substantial evidence that ComEd failed to comply with the substance of the Commission's prior Orders. (See Staff Initial Brief at 94-96, 97-104; REACT Initial Brief at 10-16; IIEC Initial Brief at 38-41, 43-45.) The Proposed Order's findings of non-compliance are well supported by the evidentiary record.

**c. Investigation of Assets Used
To Serve Extra Large Load Customer Class**

The Proposed Order correctly recognizes the substantial evidence supporting a study of the distribution assets serving the Extra Large Load customer class. (See Proposed Order at 181-182.) The Proposed Order also properly concludes that REACT is not requesting individualized cost of service studies. As REACT explained, the evidence and the Proposed Order's reasoning support expanding the study to include all over-10 MW customers. (See REACT Brief on Exceptions at 6-10; *see also* Proposed Order at 182 (recognizing the need for "uniformity regarding the equipment provided and billing for these services").) Nevertheless, ComEd persists in mischaracterizing REACT's position, again repeating its erroneous assertion that REACT seeks individualized cost of service studies, and that there is insufficient evidence to

support those studies. (*See* ComEd Brief on Exceptions at 83-86.) ComEd's arguments are not supported by the record, and ComEd's does not cite to any REACT evidence where REACT has requested individualized cost studies.²

Indeed, REACT has repeatedly clarified any potential confusion and, as recognized by the Proposed Order, specifically disclaims individualized studies in favor of sampling techniques. (*See* Proposed Order at 180 (quoting REACT witness Mr. Terhune's specific disavowal of individualized cost of service studies).) Contrary to ComEd's allegations, the Proposed Order's Analysis and Conclusions states that:

REACT also makes it clear that what is seeks involves sampling and class-wide allocation. This is contrary to ComEd's averment that preparing such a cost of service study would entail analyzing the costs on a customer-by-customer basis. While what is built-out and billed pursuant to Rider NS may be somewhat unique amongst these customers, there should be some uniformity regarding the equipment provided and billing for these services.

(Proposed Order at 182; *see also* REACT Ex. 6.0C at 33:763-34:797 (Mr. Terhune specifically disclaiming individualized cost of service studies).) In other words, the Proposed Order properly rejects ComEd's individualized cost study argument, and all of its arguments about the propriety of individualized cost of service studies are simply inapplicable. The Commission should adopt the Proposed Order's proper finding in this regard and reject ComEd's arguments to the contrary.

Additionally, ComEd argues that the Proposed Order is not properly supported by evidence. As a result, ComEd attempts to wipe out the Proposed Order's proper findings of fact.

² ComEd goes so far as to recommend language that would preclude REACT from advocating certain arguments in future proceedings. (*See, e.g.*, ComEd Exceptions at 193.) That approach is deeply flawed in and of itself. Further, ComEd's proposed language is based on the false premise that REACT seeks individualized cost of service studies, and the wholly unsupported contention that ComEd cannot conduct a study of distribution system facilities serving the over-10 MW customer classes without individualized cost of service studies. Neither position is supported by the evidentiary record or the Proposed Order, and thus any attempt to foreclose discussion on studies of assets serving customer classes would be contrary to the evidence in the present case. Finally, any attempt to prevent it would be directly contrary to the Act's specific requirement that rates should be cost based. (*See* 220 ILCS 5/16-108(c).)

(*See* ComEd Exceptions at 193, Exceptions 40 and 41.) ComEd specifically objects to the Proposed Order's use of REACT's Offer of Proof regarding Mr. Terhune's analysis. First, ComEd never moved to strike REACT's Offer of Proof; thus, although it was not admitted at the time into the evidentiary record, it is a part of the record, and may be relied upon by either the ALJs or the Commission accepting REACT's Offer of Proof. Second, ComEd was free to submit its own Offer of Proof to attempt to rebut REACT's Offer of Proof, but chose not to do so. ComEd suggests that it was unable to cross-examine Mr. Terhune, but this assertion ignores the fact that REACT made Mr. Terhune available to provide additional live testimony on the issue, subject to cross examination, but was denied that opportunity because ComEd objected. (*See* Tr. 1660:6-13, 1684:7-1686:13.)

In any event, the record contains compelling, additional independent grounds supporting the Proposed Order, in the form of the response to ALJ-OTR 1 itself, ComEd witness Mr. Alongi's explanation of how that information should be analyzed, as well as Mr. Terhune's thorough and unrebutted discussion of which customers tend to use which classes of assets, and the need for ComEd to undertake a study of the assets serving the over-10 MW customer classes. (*See, e.g.*, REACT Cross Ex. 25; Tr. at 2170:15-2171:22, 2178:21-2185:4; REACT Ex. 6.0C at 8:190-20:449, 21:475-24:567, 30:696-32:757; REACT 3.0C at 15:361-365, 16:381-19:459, 20:482-24:586, 25:610-613, 26:619-632.) ComEd did not present any testimony rebutting Mr. Terhune's discussion of the engineering realities of ComEd's grid, nor did it even question Mr. Terhune on cross-examination about the specific substantive engineering analysis that he provided. As a result, Mr. Terhune's testimony appropriately forms the basis for the Proposed Order's findings on this topic, with supplemental credit going to the ALJ-OTR 1 documents and Mr. Terhune's analysis which provided compelling confirmation and corroboration of his pre-filed testimony. (*See* Proposed Order at 181-182.) Thus, even if REACT's Offer of Proof is not

considered, there is plenty of evidence that ComEd had ample opportunity to challenge or rebut. Based upon the evidence in the record and the reasoning set forth in the Proposed Order, REACT respectfully requests that the Commission direct ComEd to work with REACT to perform a study of distribution system facilities actually used to provide service to the over-10 MW customer classes.

REACT respectfully requests that the Commission enter an Order that directs ComEd to perform a study to analyze the actual costs ComEd incurs to provide delivery services to the over-10 MW customer classes and present the results in its next initial rate filing.

k. Customer Care Cost Allocation

1. Allocation Study vs. Switching Study

ComEd once again attempts to prop up its Switching Study, even while admitting that its Switching Study is incapable of assigning total customer care costs, as required by the Proposed Order. (ComEd Brief on Exceptions at 88-89.) ComEd goes so far in its exceptions language as to suggest that the Switching Study should never be challenged in any future rate case. (*See* ComEd Proposed Replacement Language at 208.) In the process, however, ComEd has confirmed exactly what REACT has argued: that the Switching Study is a results-based approach that cannot properly allocate all Customer Care Costs. Furthermore, the Switching Study does not and cannot account for very realistic future scenarios identified in the Proposed Order. As a result, the Commission should reject the Switching Study and ComEd's attempt to insulate the study from further investigation, and instead adopt the embedded cost of service Allocation Study approach.

ComEd notes -- as REACT did in its Brief on Exceptions -- that the Proposed Order raises serious questions about the Switching Study approach, even as the Proposed Order recommends that approach. (*See* ComEd Brief on Exceptions at 88; REACT Brief on

Exceptions at 13-17.) The Proposed Order's apparent underlying skepticism about the Switching Study is well-founded; as REACT explained, the Proposed Order's well-articulated underlying goal of accurate cost allocation is best addressed with the embedded cost Allocation study approach. (*See* REACT Brief on Exceptions at 15-17.) The Proposed Order notes:

It is possible that, in the future, ComEd's customer care costs could differ from what they are now, in terms of the amounts involved and the types of services involved, as, items like IT interfacing with alternative suppliers becomes more sophisticated. Also, pursuant to ComEd's PORCB program, consolidated billing is now an option (consolidated between the alternative supplier and ComEd). Therefore, this issue may need to be explored some time in the future.

(Proposed Order at 196.) These observations are entirely consistent with the concerns raised by REACT about the essential flaw of the Switching Study: the Switching Study fails to account for the fact that no party knows what Customer Care Costs will look like when (if ever) switching hits 10% or 100%. (*See, e.g.*, REACT Brief on Exceptions at 14.) On this point, the Proposed Order is exactly correct -- indeed, the Proposed Order's observations highlight the drawbacks of the Switching Study. (*See* REACT Brief on Exception at 14-17.) Those drawbacks were candidly recognized by the witnesses from ComEd and Staff who agreed (as they must) that attempting to predict ComEd's future Customer Care Costs requires speculation. (*See* Tr. 1190:14-17 (Staff witness Mr. Rukosuev); Tr. 1312:10-1314:8 (ComEd witness Mr. Donovan).) To alleviate these well-founded concerns, the Commission should use the embedded cost Allocation Study approach. (*See* REACT Brief on Exceptions at 15-17.)

The Allocation Study's embedded cost approach is consistent with the approach used to address virtually all other costs at issue in this proceeding, and is consistent with the goals of the Act. (*See* REACT Brief on Exceptions at 16-17 *citing* 220 ILCS 5/16-102; *see also* ComEd Response to ALJ Post-Record 4 Attachment 2 (ComEd's post-Proposed Order ECOSS); ComEd Ex. 75.1-75.3 (ComEd final ECOSSs from testimony); IIEC Ex. 5.4 (IIEC final ECOSS from testimony).) Neither the Proposed Order nor ComEd has not articulated any reason to treat

Customer Care Costs differently than every other cost component. While REACT understands that Staff has expressed a concern that allocating Customer Care Costs using the Allocation Study might have implications for the treatment of allocation of Customer Care Costs for other utilities, Staff has not presented evidence regarding the impact, if any, on those other utilities, and, in any event, accurate cost allocation is the Act's statutory directive -- if that directive means that different allocation approaches might be required in other proceedings, that is because the Act directs such a result. (*See* REACT Reply Brief at 24.) The Commission has a duty to faithfully apply the Act's requirements in exercising its "general supervision" over utilities. (*See* 220 ILCS 5/4-101; *Local 777 DUOC, Seafarers Int'l Union of N. Am. V. Ill. Commerce Comm'n*, 45 Ill.2d 527, 535, 260 N.E.2d 225 (Ill. 1970) ("In our opinion the General Assembly, by exempting from the Antitrust Act those activities of any public utility which are subject to the jurisdiction of the Commerce Commission, reaffirmed the policy expressed in the Public Utilities Act that strict supervision and regulation, particularly with respect to rates charged and services provided, make an effective safeguard against the evils of monopoly at which antitrust laws are traditionally directed.").)

Accordingly, REACT respectfully requests that the Commission modify the Proposed Order to adopt the Allocation Study approach, applying the allocators as modified by REACT expert witness Mr. Merola.

2. Direct Operation and Maintenance (O&M) vs. Total Costs

ComEd inappropriately contests the Proposed Order's well-supported conclusion that ComEd should allocate all of its supply-related Customer Care Costs to its supply function; according to ComEd, only a fraction of its direct O&M Customer Care Costs should be allocated to supply. (*See* ComEd Brief on Exceptions at 88-89.) ComEd's approach flies in the face of the Commission's previous observations that "[i]f the Commission's goal is to assign costs to the

cost causers, it is difficult to imagine that less than 1% of ComEd's Customer Care Costs are caused by supply related matters.” (ICC Docket No. 08-0532, Final Order dated April 21, 2010, at 67.)

ComEd candidly admits that under its Switching Study it is a pointless exercise to look at ComEd's total Customer Care Costs, because adding those additional costs but using the same methodology would lead to the same answer: allocating less than 1% of its Customer Care Costs to supply. (*See id*; ComEd's Response to ALJ Post Record 2.) As ComEd put it,

The Switching Study clearly concludes that no change in costs occurs at 1% switching, which is the current situation. This conclusion does not change whether the relevant pool of costs is Direct O&M Costs as analyzed by ComEd or “total costs” as defined by Mr. Merola. Simply put, 0% of \$176,231,365 is the same as 0% of the sum of \$176,231,365 plus \$141.9 million.

(ComEd Brief on Exceptions at 88-89 (internal citations removed).) ComEd is, of course, right that if it has settled on an allocation percentage of zero, applying that outcome to a different cost pool will not change the allocation. ComEd's position further shows why the concerns expressed in the Proposed Order about relying upon the Switching Study approach were appropriate. (*See* Proposed Order at; 196; *see also* REACT Brief on Exceptions at 13-15.)

In essence, ComEd is saying that the Commission should concluded that there are no capital costs or indirect O&M cost associated with providing supply-related Customer Care. (*See id.*) ComEd proposes to just indiscriminately lump all of those costs together and recover them in its delivery services rates, without regard to causation. ComEd's lumping together of all these costs without any distinction puts into sharp focus the essential structural flaw of the Switching Study approach.

ComEd's argument establishes that if the Commission wants an allocation of all Customer Care Costs, including the indirect O&M and capital costs that ComEd acknowledges it incurs in providing Customer Care, then the Commission should adopt the Allocation Study

approach. That is, ComEd admitted that it did incur indirect O&M costs and did incur capital costs. (See REACT Initial Brief at 55, 59.) No party disputed that ComEd should recover these costs, which in turn requires that ComEd allocate them. (See REACT Brief on Exceptions at 10, 13.) In light of the Switching Study's **demonstrated** inability to properly allocate indirect O&M and capital costs as well as the Proposed Order's well-founded concerns about the level of speculation inherent in the Switching Study approach, REACT respectfully requests that the Commission direct ComEd to use the Allocation Study approach to allocate all of its Customer Care Costs.

VII.

RATE DESIGN

C. Potentially Contested Issues

2. Non-Residential

(a) Movement Toward ECOSS Rates

(i) Extra Large Load and High Voltage Customer Classes

Two parties have suggested increases for ComEd's largest customers beyond the rate moderation plan approved by the Commission in ComEd's 2007 Rate Case. (See Staff Brief on Exceptions at 86-89; Commercial Group Brief on Exceptions at 5-7.) However, those suggestions ignore the original justification for the rate moderation plan, as well as the fundamental flaws contained in the ECOSSs presented in the instant proceeding. As a result,, increases to the over-10 MW customer classes should be restricted to no more than a system average increase. (See REACT Brief on Exceptions at 19-20.)

There were two reasons behind the rate moderation plan from the 2007 Rate Case: (1) accounting for the Commission's serious concerns with ComEd's ECOSS; and (2) avoiding rate shock. (See, e.g., REACT Reply Brief at 28-29; see also REACT Initial Brief at 62-64

(further describing criticism of ECOSs).) The Proposed Order acknowledges exactly these concerns in its refusal to depart from the rate moderation plan from the 2007 Rate Case:

While the ECOSs approved here still needs further refinement, which shall take place in a future rate case, it is accurate enough to move, gradually, toward cost-based rates for these two classes.

(Proposed Order at 249.) The Proposed Order also notes that all of the ECOSs presented in the current proceeding were “faulty” and included allocations that likely did not reflect cost causation for the over-10 MW customer classes. (*See* Proposed Order at 249.) Given the continuing acknowledgement of the flaws in the ECOSs that will be used to set rates in this proceeding, there is no reason to exceed the 33% movement toward that ECOSs. Indeed, it would be appropriate for the Commission to question the notion of *any* rate increase for these customer classes. Certainly this evidentiary record does not support an increase exceeding the mitigation plan previously set out by the Commission.

Staff asserts that the Extra Large Load, High Voltage, and Railroad customer classes’ overall revenue requirements should see 33% increases, rather than the 2007 Rate Case-approved 33% increase of the classes’ Distribution Facilities Charges. (*See* Staff Brief on Exceptions at 86-89.) Although the underlying logic is unclear, Staff suggests that High Voltage and Railroad customers are “rewarded” with lower increases. (*See id.* at 87.) The “reward” is unclear; what is clear is that rate increases continue to be assigned to over-10 MW customer classes even though ComEd has failed to provide the evidence necessary to justify allocating rate increases to these classes. Regarding the magnitude of the rate impact, the Proposed Order appropriately found that “Staff’s proposal is not consistent with the principle of gradualism, which avoids rate shock.” (*Id.* at 249.)

The Commercial Group’s assertion that the High Voltage class should be subject to additional increases is incorrect for at least three reasons. First and foremost, the Commercial

Group is unable to point to any ECOSS that accurately allocates costs to the High Voltage Class. Simply noting that the charges to the High Voltage Class are lower than charges to other classes is a meaningless comparison unless and until there is accurate data regarding the actual costs that each class imposes on the ComEd system. Such data does not yet exist for the High Voltage Class.

Second, the Commercial Group's argument appears to be based on an incorrect understanding of IIEC's final ECOSS. The Commercial Group suggests that the High Voltage class is only charged \$0.0028/kWh in delivery charges. (*See* Commercial Group Brief on Exceptions at 8.) Although this may be an accurate depiction of a prior version of ComEd's proposal, the most updated schedule of rates does not support the Commercial Group's assertion. (*Compare* ComEd Ex. 73.3 with ComEd's Response to ALJ Post Record Data Request No. 4, Attachment 1.) The average price quoted for the High Voltage class in the most recent information is an average of all High Voltage customers, including those that own their own transformers. Because there is no additional breakdown of customer information, there is not sufficient evidence to support the Commercial Group's suggestion that the over-10 MW High Voltage class would pay the lowest rates in ComEd's system.

Finally, the proper and well-supported conclusions in the Proposed Order about gradualism and protecting the High Voltage class from rate shock rebut the Commercial Group's suggestions that the class should face further increases. (*See* Proposed Order at 249.)

REACT respectfully requests that the Commission modify the Proposed Order limit the increases to the over-10 MW customer classes to no more than a system average increase.

3. Collection of Illinois Electricity Distribution Tax

IIEC's latest explanation of IEDT cost causation provides additional clarity to this issue. (*See* IIEC Brief on Exceptions at 19-31.) The Proposed Order makes clear that it was making its

decision based on cost causation principles, which REACT (and all other parties presumably) agree is the correct framework. (*See* Proposed Order at 270.) Using statistical evidence, IIEC establishes that IEDT costs are caused by two drivers, the overwhelming majority (over 90%) of which is plant-in-service from 1997. (IIEC Brief on Exceptions at 21-24.) IIEC's argument is well-supported and best reflects cost causation; as a result, REACT respectfully requests that the Commission adopt IIEC's proposal.

4. Distribution Loss Factors

Staff raised the appropriate point that when ComEd refiles its Distribution Loss Factors ("DLFs") after conducting its Transmission Loss Study, the new DLFs should be presented in a contested docket, rather than as a compliance filing. (*See* Staff's Brief on Exceptions at 95-96.) REACT agrees with Staff's suggested approach for two reasons. First, it is consistent with REACT's suggestion that ComEd submit its DLFs yearly to avoid shocks and surprises. Second, it is consistent with the Proposed Order's statement about the "better approach" to making decisions, which involves getting "parties to present accurate and complete evidence in support of their positions." (Proposed Order at 276.) Thus, consistent with the Proposed Order's goal of accuracy, REACT respectfully requests that the Commission adopt Staff's proposal.

XI.

CONCLUSION

In many respects, the Proposed Order appropriately reaffirms the Commission's belief that ComEd's delivery services rates should accurately reflect the actual costs ComEd incurs to provide delivery services, and reiterates that ComEd should be required to abide by the Commission's prior Orders to achieve this result. Certain minor revisions to the Proposed Order are appropriate, to allow the Commission to better design ComEd's rates so that costs are borne by the cost-causers. However, some of the proposals, particularly those in ComEd's Brief on

Exceptions, would undermine the cost causation principles that are advanced in the Proposed Order. REACT respectfully requests that the Commission:

- Reject ComEd's contention that the Commission lacks the authority to require ComEd to file studies or analyses with its initial rate case filings;
- Reject ComEd's exceptions relating to the study of distribution system assets, and instead expand that study to include all of the over-10 MW customer classes;
- Impose a rate increase upon the over-10 MW customer classes of no more than a system average increase, rejecting the suggestion by the Commercial Group and Staff to increase rates for ComEd's largest customers beyond the defined increase in the rate moderation plan from the 2007 ComEd Rate Case.
- Adopt the Allocation Study to allocate all Customer Care Costs (including capital costs and indirect O&M costs), rejecting ComEd's exception that would result in having the Switching Study allocate only direct O&M Customer Care Costs.
- Adopt IIEC's thorough and well-supported analysis of cost causation for the IEDT.
- Adopt Staff's suggestion that ComEd's resubmission of Distribution Loss Factors after completing its Transformation Loss Study take place in a contested proceeding; and
- Grant such other relief as the Commission determines to be necessary or appropriate.

Respectfully submitted,

**THE COALITION TO REQUEST EQUITABLE
ALLOCATION OF COSTS TOGETHER**

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